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# Worldwide Report

LAW OF THE SEA

No. 165

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## WORLDWIDE REPORT

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## MINITREATY AMONG BIG POWERS WOULD BE COUNTERED BY MAXITREATY

Kuala Lumpur NEW STRAITS TIMES in English 5 Jun 81 p 14

[Article by Zainah Anwar in New York]

[Excerpts]

The big powers would prefer the unwritten customary regime of the sea because they could sail and do anything they wanted without any binding legal responsibility. What a country like the US should realise is the irrefutable point that it could never again enjoy the kind of untrammelled freedom it had in the past.

Most developed countries wanted the right to fish anywhere in the high seas and this had allowed countries like Japan and the Soviet Union, with their superior technology, to overfish at the expense of smaller coastal states.

But the Law of the Sea treaty would provide an internationally recognised economic zone to exploit and own resources only within a 200-mile limit off the coast or to the extent of a state's continental shelf.

The 12-mile territorial limit reached through the negotiating process has also settled unilateral claims by coastal states for sovereignty — ranging from three to 200 miles — of the waters around them. The list goes on to cover the rights of transit passage through straits and archipelagos to the protection of environment and marine life.

All these are much more important achievements of the treaty than to risk it being jeopardised just because the deep sea mining provisions run counter to the Reagan Administration's free enterprise approach.

The US should realise it is not negotiating the treaty alone. The draft treaty represents a delicate compromise among 155 countries over sensitive issues of boundaries, navigational rights, energy, fisheries, minerals and environment. It is a collective endeavour to benefit from the common heritage of mankind.

There is something in it for everyone.

It would be a costly mistake for the US to think the treaty would die with the collapse of the conference. Those close with the negotiating process say there is a 50-50 chance the US will ask for major demands which will be interpreted by the rest in the conference as a signal that the US intends to scuttle the treaty.

One diplomat said if the US asks for fundamental changes, it means the same as if the US had come out outright and said: "We opt out of this multi-lateral negotiation. We don't like the treaty. Kill it."

There is validity in the suspicion at the UN that the US would rather work for a mini-treaty among the major industrialised countries of West Germany, France, Britain, Belgium and possibly Holland, over the issue of deep sea mining.

The US, last year, and West Germany have already adopted unilateral legislations under which private companies could register claims and ask for permits to mine on a commercial basis.

What these countries would like to see is a capping of these national legislations with an umbrella treaty guaranteeing reciprocal recognition of each other's claims.

This plan is almost analogous to different Mafia gangs carving out their own territories and agreeing to stay out of each other's turf.

This arrangement is workable if the rest of the world were to sit back, as if powerless, but it is highly unlikely the Group of 77 would let this happen.

Delegates at the last session have stated often enough that there is too much at stake. If there is a mini treaty among the big powers, there will be a "maxi treaty" among the rest that would never recognise the claims

made by private mining companies under the former.

According to one negotiator, it will be easy for the conference to get by Latin American, Asian, African, European, East European and North American countries to open the treaty for signature and get well over 100 countries to sign it to counter a mini treaty by industrialised countries.

Of course, he said, the delegates would rather see the treaty approved in the UN under normal procedures. But if that does not work, "no one wants to see the draft treaty go down the drain and allow a vacuum in the law of sea to be filled by a mini treaty."

If the US wants to undermine the UN, slap the Group of 77, anger Eastern Europeans, harm the interests of its allies, then it can easily flex its muscle and cause efforts by 154 countries to come to a halt after seven years of compromise and understanding to come up with a landmark treaty that would have represented the biggest achievement of the UN since its founding.

And there are many in Washington who believe that the rest of the world deserve a slap from the US.

NUCLEAR WASTES SAID TO PERIL PACIFIC BASIN

Manila BULLETIN TODAY in English 9 Jul 81 p 24

[Concluding portion of a speech delivered by Assemblyman Gualberto B. Lumaig, head of the Philippine delegation to the recently-concluded 30th Council Meeting of the Asian-Pacific Parliamentarians' Union--Ed.]

[Text] Vessels carrying toxic wastes from the developed Western World sail to some obscure ocean retreat to dump thereon the precariously packaged poisonous leftovers from chemical plants. Dumping such pernicious substances, discarding them into the Pacific must be banned by humanity. Some of these chemicals like DDT and other pesticides were earlier believed to be useful until their toxicity was found incapable of dissipation so that their usage has been banned in agriculture, industry or even in storage.

Then there is the matter of nuclear tests. Quite known to the people of the Pacific was the awesome explosion of the hydrogen bomb tested on one of the atolls. Of course, the native inhabitants were earlier evacuated. But as everyone now knows, nuclear bomb is detonated by atomic fission and the process results in extensive radioactive fallout.

So injurious to human life, health and living things are the atomic explosions and nuclear tests that even the big powers themselves have covenanted to go slow on such tests. In 1963, the United States, the United Kingdom and the Soviet Union signed a treaty pledging themselves not to conduct tests above the ground.

In 1968, these three nuclear powers signed a treaty with some 58 other countries, pledging to stop the proliferation of nuclear arms. And in 1972, both Russia and the United States agreed to halt the nuclear arms race.

However, nonsignatory France later exploded its own nuclear bomb on the Sahara Desert. Subsequently, mainland China did likewise on some remote desolate spot of her Asiatic hinterland. India is on the way to developing its own capability--and so do other countries.

The danger, quite obviously in all this, is that countries with no land wide enough to have a corner for test purposes would feel justified in taking their lethal experiments to the Pacific.



Truly some visitor from another world be astonished at earthman's recklessness in the use of his world's peaceful assets. Rudimentary oceanography tells us that marine life drifts in the warm ocean currents in continuous cycle throughout the world. Along such currents, fish that spawned in African or Indian rivers trail plankton food to wind up caught on some other shores. Tuna from the Indian Ocean, for example, gets caught in the western Pacific, just as salmon spawned in Alaska streams phenomenally finds its way into Atlantic waters.

And so, my friends, we ask ourselves: Why allow the wanton destruction of what provident Nature prepared for man's welfare? Why convert the many paradise islands of the Pacific into sinister fallout traps for the unwary?

Surely the geniuses inventive of destruction can also invent other ways of disposal for its lethal wastes--seal them in unbreakable containers or subject them to chemical reactions that will remove their toxic potency. How to conduct the nuclear tests elsewhere but in the Pacific should likewise be no problem.

What is vital to our own welfare in the Asian and Pacific region, at this moment, is for us in APPU to speak out, to resolve on the occasion of our 30th Council Meeting to:

- 1) Declare the Pacific Basin "Off Limits" to atomic and nuclear arms tests,
- 2) Ban the dumping of nuclear wastes in this area, and
- 3) To declare it the policy of our respective governments to disallow the importation of chemicals and drugs already declared unsafe in their countries of origin.

My colleagues in APPU, let us do this for the safety and well being of our generation, and of generations to come.

CSO: 5200/4920

## INTER-AMERICAN AFFAIRS

### BRIEFS

JAMAICA, COLOMBIA FISHING AGREEMENT--Kingston, Jamaica, 23 Jul(CANA)--Jamaica and Colombia are close to signing a fishing agreement, Jamaica's Junior Foreign Minister Neville Gallimore has said. Dr Gallimore held talks this week with his Colombian counterpart Julio Londano and later reported significant progress in efforts to conclude a fishing accord. Last month 16 Jamaican fishermen were arrested by authorities in the South American state for illegal fishing in Colombian waters. The fishermen were freed after Jamaica paid fines totalling 16,000 dollars. The fishermen had left here to fish in the Pedro Banks, on which lie the Jamaican-owned Pedro Cays, about 50 miles south of here. About the same distance south of the Pedro Cays is the island of Bajo Nuevo, owned by Colombia. Jamaicans straying into the Colombian 200-mile economic zone from the Jamaican waters around the Pedro Banks has been a recurring problem, and Dr Gallimore said following "frank exchanges and hard bargaining an agreement should be ready in a short time." The agreement, he said, would go a long way towards preventing further problems. [Text] [FL231908 Bridgetown CANA in English 1817 GMT 23 Jul 81]

CSO: 5200/2101



## BRIEFS

SHIP POLLUTION REGULATIONS--As of this month the Bermuda Government will have more authority in dealing with local shipping incidents where the national interest is at stake. For thanks to an Order in Council made in London on June 10, Government will be able to take action if necessary against ships in local waters carrying noxious substances. The Merchant Shipping (Prevention of Pollution) (Intervention) (Bermuda) Order, 1981, comes into effect on August 1. It was requested by the Bermuda Government following an incident in February in which severely damaged ship, the Eastern Mariner 1, carrying highly toxic ammonium phosphate sought refuge in Bermuda. After protracted discussions with Government, the ship left, only to sink a few miles off the Island. The Hon. Sir John Sharpe Minister of Marine and Air Services, said yesterday: "The Merchant Shipping Order of 1981 will enable measures to be taken to prevent, mitigate, or eliminate grave and imminent danger to the coastline or related interests from pollution, or threat of pollution of the seas by substances other than oil following a maritime casualty." Previously, the Government only had power to order ships away from territorial waters if there was an oil pollution threat. The new Order lists just under 100 toxic chemicals which are subject to Government intervention. Government had ordered the Eastern Mariner 1 out of territorial waters under authority of the Oil Pollution Act (1980). However, legal responsibility has yet to be determined, although no civil action has yet been taken. Included in the noxious substances listed in the Order are arsenic compounds, DDT, cyanide compounds, benzene--and ammonium phosphate. [Text] [Hamilton THE ROYAL GAZETTE in English 1 Jul 81 pp 1, 3]

CSO: 5200/7544

BRIEFS

ANTI-PIRACY MEASURES--The union of chambers of commerce, industry and agriculture for the gulf states is presently in contact with the international chambers of commerce and navigation to work on remedying the damage which gulf importers suffer from pirating operations. They are also working on amending naval transport legislation in the interest of the rights of importers to the gulf states. The economics division, under the secretariat general of the union, has recently completed a thorough study of pirating operations and means of stopping them through coordination of the efforts of the gulf states, a unified policy of action vis-a-vis cooperating states, combating acts of piracy and treachery, and the imposition of stiff penalties against the perpetrators of such crimes. [Text] [Kuwait AL-QABAS in Arabic 13 Jul 81 p 15]

CSO: 5200/4706

DETACHMENT OF CHAGOS FROM MAURITIUS TERMED 'ILLEGAL'

Port Louis LE MAURICIEN in French 13 Jun 81 p 5

[Article by Sydney Selvon]

[Text] A Mauritian Government determined to recover the Chagos Islands (which include Diego Garcia) could invoke the failure to recognize the right of peoples to self-determination, violation of the territorial integrity of Mauritius and the theory of faulty consent.

This is the position taken by Andre Oraison, assistant professor of law at the French University of the Indian Ocean (Reunion University Center), in a long study entitled "The Misadventures of the British Indian Ocean Territory" and subtitled "The Process of the American Military Buildup on Diego Garcia."<sup>1</sup>

In this same study, Oraison, who does research in Mauritius and London, mainly in the Foreign and Commonwealth Office, publishes the text of an Anglo-American agreement signed in 1976 and whose Article 13 clearly contradicts the statements made in the Mauritian Legislative Assembly by the prime minister, Sir Seewoosagur Ramgoolam. Article 13 of the Anglo-American agreement, signed on 23 February 1976, reads as follows: "The Government of the United Kingdom will not permit commercial fishing in the lagoon or oil or mineral exploration or exploitation on Diego Garcia for the duration of this agreement. Furthermore, the Government of the United Kingdom will not permit commercial fishing or oil or mineral exploration or exploitation in or under those areas of the waters, continental shelf and sea-bed around Diego Garcia over which the United Kingdom has sovereignty or exercises sovereign rights, unless it is agreed that such activities would not harm or be inimical to the defence use of the island." This even though after the signing of the agreement, Sir Seewoosagur Ramgoolam assured members of the Mauritian Parliament that "Mauritius will have the right to work minerals and fishing rights on and around Diego Garcia" ("Mauritius, Third Legislative Assembly, Debates No 28 of 1976, tenth session, Tuesday, the 19th, October 1976, cols 2887-2888").

And as Prime Minister Thatcher of Great Britain confirmed in writing on Friday, 11 July 1980, in the House of Commons, according to the HANSARD of the British Parliament, contrary to what he had constantly told the Mauritian Parliament and others, Sir Seewoosagur Ramgoolam knew perfectly well that the Chagos were going to be used for defense purposes. After a year of research, Oraison came to the same conclusion: "Sir Seewoosagur Ramgoolam truly could not have been unaware, in 1965, of the use which Great Britain intended to make of the Chagos Islands in incorporating them into the British Indian Ocean Territory."

## Chagos Deportees

It will be noted that Oraison, a jurist, unreservedly uses the word "deportees" to designate the Islanders and not the term "displaced persons." At one place in his study, he describes them as the "Palestinians of the Indian Ocean." In this connection, one would observe that Oraison, who now gives law courses in Port Louis, is making use of his stay in Mauritius to advise the National Front for Support for the Islanders before the departure of the representatives of that organization for negotiations in London aiming at a second award -- more substantial than the first compensation -- for the persons deported from the archipelago. His research led him to the conclusion that this petition for compensation is fully justified, as is any Mauritian demand that the archipelago be returned to Mauritius.

In his study, Oraison states that there are two very distinct problems to be analyzed: 1) the excision of the Chagos and 2) the militarization of the Indian Ocean. But he does not fail to connect the two questions insofar as, in his opinion, it was the creation of the British Indian Ocean Territory by the British Government and the construction of the American base at Diego Garcia which "started the escalation of the American-Soviet arms race in the Indian Ocean." The Soviets came later, he emphasizes. "The governments in London and Washington were undeniably the first to jump into the race to militarize the Indian Ocean. But their spectacular moves could logically only result in the arrival of the USSR in an extremely unstable region and then the intensification of their presence," he writes, after tracing the history of the problem of the militarization of the Indian Ocean.

Oraison also concludes that since it is Sir Seewoosagar Ramgoolam who surrendered Diego Garcia, he will not be able to negotiate for its retrocession. "Actually," Oraison states, "only a government headed by the MMM, which has no responsibility in this affair, could officially demand the destruction of the British Indian Ocean Territory and the retrocession of the Chagos Islands to the Mauritian nation, if need be, by taking the British-Mauritian dispute before a court of arbitration or the International Court of Justice. However, one must realistically admit that such a solution implies the preliminary departure of the Americans from Diego Garcia, which they have leased from the English for an undetermined period of time, and therefore, the end of the cold war" in the surrounding waters. However, it would not appear that this objective could be achieved in the foreseeable future.

Oraison concludes his study by emphasizing: "In becoming the crude oil route over which 60 percent of Europe's supply is taken, 90 percent of that of Japan, 60 percent of that of Australia and 20 percent of that going to the United States -- over a billion tons of oil in 1980 -- the Indian Ocean, the "new heart of the world," to use the expression of Adm Henri Labrousse, has in fact entered a period of prolonged crisis."

## Bad Bargain

The researcher is of the opinion that Mauritius could try to obtain from an international court of arbitration an invalidation of the surrender of Diego Garcia in 1965, based on the theory of faulty consent. Since Sir Seewoosagar Ramgoolam was forced to turn over the Chagos Islands in exchange for a promise of independence from the British authorities, it is clear that he was grossly deceived, induced into error.

"When one observes the evolution of the Commonwealth, it now appears certain that Mauritius would have obtained its independence like any other English colony, even if it had refused to give up the Chagos Islands. Viewed historically, the British-Mauritian 'agreement' in 1965 appears to have been a 'bad bargain.' Sir Seewoosagur Ramgoolam appears to have been led into error by the British contracting party and consequently, was the victim of a misrepresentation. With respect to public international law, could the surrender of the Chagos to the English by the Port Louis government not be declared nul and void? Moreover, it would appear, especially because of the ridiculous price involved, that it was a prejudicial sale. Finally, the creation of the British Indian Ocean Territory fails to recognize the basic principles of the United Nations and the Organization of African Unity: self-determination of peoples and the intangibility of borders," Oraison writes. In a footnote, he spells out the notion of fraud in international law, maintaining that "fraud entails the nullification of the agreement when it results from consent allegedly given and directly emanates from the co-contracting party, in keeping with Article 49 of the Vienna Convention of 23 May 1969 on treaty law" and he further states that "in the case of the Chagos Islands, the conditions for misrepresentation seem to exist."

Oraison, who denies meddling in Mauritius' domestic affairs, nevertheless reminds us that the study he completed is purely scientific that took him a year in Mauritius and London. Furthermore, this study fits in perfectly with research undertaken by the French University of the Indian Ocean (Reunion University Center), whose main interest is the southwestern region of the Indian Ocean. It is within this context that he takes up the question of the islanders deported from their native islands by British and American authorities.

#### FOOTNOTES

1. "The Misadventures of the BIOT (British Indian Ocean Territory): The Process of the American Military Buildup on Diego Garcia," by Andre Oraison. The study was published in the ANNUAIRE DES PAYS DE L'OCEAN INDIEN (APOI: February 1979), Volume VI. It was made possible by research grants from the French University of the Indian Ocean.

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CSO: 5200/4966



## STIFF ANTI-OIL SPILL LEGISLATION PASSED

Victoria NATION in English 15 Jul 81 pp 1, 2

[Text] **P**EOPLE guilty of discharging oil in Seychelles' territorial waters may now be imprisoned for five years and fined up to R. 200,000. Anyone preventing or hindering a pollution control officer in his duties may be fined R. 75,000.

These penalties are detailed in the Maritime Pollution Regulations, one of the toughest anti-pollution laws ever passed here.

It will even be an offence to discharge oil outside the country's territorial waters if it will end up polluting those waters or any part of Seychelles.

Though obviously aimed at tankers and other ships, whose owners or masters will be held responsible, the new regulations equally apply to discharges from land — and to people in charge of equipment

used to transfer oil from or to a vessel. The ban covers oil, oily mixtures and oil-based spirits.

There are only four defences. One is that the discharge was necessary to save the ves-

sel, to prevent damage to it or her cargo, or to save lives.

The second defence is that the oil escaped as a result of damage to the vessel, provided that everything possible was done to prevent, stop or reduce the discharge.

The third covers leaks that occur despite proper care, but once again all reasonable steps must be taken to stop or reduce the discharge.

The fourth defence concerns oil pollution from land. If it is caused by someone who is in the area without the permission of the occupier, then the occupier will not be guilty.

Pollution control officers may be appointed and they may, even without a warrant, stop any vessel suspected of breaking the law, even if it is outside the country's territorial waters. The officers may board the vessel for en-

quiries and take samples of oil or other substances.

If an officer reasonably believes that these regulations have been broken, he may seize and detain the vessel, its equipment, stores and cargo, and arrest anyone he believes has committed such an offence. In doing so, the law allows him to use reasonable force.

Officers may also pursue a vessel out of Seychelles' territorial waters if necessary, where their powers are based on international law.

The various costs a convicted person may have to pay make the price for breaking the pollution laws very high indeed.

These are: the costs of detaining the vessel, of repatriating any member of the crew and the whole or part of the cost of restoring the damage done by the discharge.



The Supreme Court may extend the detention of a vessel until the fine is paid or until a bond is provided covering the value of the vessel, its equipment, stores and cargo, the maximum fine liable and all the costs mentioned.

CSO: 5200/4967

JOINT FISHING VENTURE WITH IRAQ REPORTED

Victoria NATION in English 15 Jul 81 p 2

[Text] IN THE light of the country's aims in self reliance and development, the Seychelles-Iraqi Fishery Corporation Bill will be one of the most economically promising to pass through the hands of the Members of the People's Assembly.

Published last week, the Bill proposes the setting-up of a joint, multi-million rupee industrial fishing venture based on an agreement signed by the two governments in Baghdad in April, 1980.

If the Bill is passed at the Assembly's next sitting, it will set up the Seychelles Iraqi Fishery Corporation, with an initial capital of over R75 million, to fish in Seychelles' Exclusive Economic Zone and to process and market fish and fish products. Seychelles will hold a 51 per cent majority share.

The Corporation will be set up for 15 years and will

then continue for further periods of five years at a time, subject to the agreement of both sides.

The general policy of the Corporation will be decided by a general board of representatives of both Governments. All decisions will be taken unanimously and where such an agreement is not reached, the issue will be settled by the Governments.

The day-to-day operations of the Corporation will be managed by a six-strong board of directors.

SAP

## MARINE MAMMALS SANCTUARY DECREE SIGNED BY RENE

Victoria NATION in English 17 Jul 81 p 1

[Text] **M**ARINE mammals such as porpoises (marsouins), dolphins, whales and dugong are now given greater protection in Seychelles under a decree that has just come into force.

The Marine Mammals Sanctuary Decree, signed by President René, is one more example of the Government's wish to conserve our unique environment and its wildlife.

Under the decree, which was passed in 1979 but came into force only at the beginning of this month, Seychelles' territorial waters and exclusive economic zone become a sanctuary for the above-mentioned mammals.

It is forbidden to kill or chase any marine mammal with intent to kill it; to harass it so as to disturb its natural behaviour or breeding habits; to take it alive or dead, even if it is stranded on land.

### *Punishment*

Anyone found guilty may be imprisoned for up to five years and fined up to R. 200,000. The court may also confiscate the offender's boat and equipment.

It will be a defence to prove that the mammal, if taken alive, was returned to the sea or, if taken dead or so seriously injured it was unlikely to recover, that the catch was reported to the Principal Secretary for Agriculture and the mammal disposed of following his instructions.

**SAP**

## SEYCHELLES

### BRIEFS

TUNA-CATCHING PROJECT--Two Spanish fishing boats are now in Seychelles' waters carrying out research into methods of catching tuna, a study that forms part of the expanding co-operation between Seychelles and Spain. The Madre del Cantabrilo and the Bahia de Santana are doing a one-year research programme following the signing of a fisheries co-operation agreement between the two countries last year. The two small boats are manned by experienced Basque fisherman who have already caught 12 tonnes of tuna in 15 days of fishing. A spokesman for the Fisheries Division described this catch in the unfavourable weather of the South-East monsoon as quite good. The Basques are using the pole and line techniques that Spanish fishermen have successfully employed for the past 100 years. They are able to catch live bait on the open sea without having to travel all the way back to the coast. If the research programme proves a success, then Seychellois fishermen will learn this technique of commercial tuna fishing. [Text] [Victoria NATION in English 17 Jul 81 p 1]

CSO: 5200/4967

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